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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,421	11/26/2003	James A. Nolen	1387.010USU	2681

7590 04/06/2005
George W. Rauchfuss, Jr.
Ohlandt, Greeley Ruggiero & Perle, L.L.P.
Tenth Floor
One Landmark Square
Stamford, CT 06901-2682

EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,421

Applicant(s)

NOLEN ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wigton et al. in view of Admitted Prior Art for substantially the same reasons as stated in the first Office Action.

The patent to Wigton shows an insect attracting trap and the process for attracting insects to the trap by producing a gaseous product of carbon dioxide and providing the carbon dioxide gas to the insect trap to lure insects to the trap and destroy them.

Wigton employs a burner to combust a carbon based fuel which produces carbon dioxide and water as the products of combustion. Wigton also employs an enclosed housing 16, 18 having an inlet 32 for entry of air into the housing and a discharge outlet 48 for discharge of an insect –attracting gaseous product 50 to attract insects to the trap 34. The burner acts as an element in the housing for treating air to produce a gaseous mixture containing carbon dioxide and water. On pages 7-8 of the specification of the present application in paragraph [0011], applicant states that ozone generators and activated carbon filters are old and well known in the art. Hence, in reference to claims 1, 2, 5, 6, 8, and 9, it would have been obvious to provide Wigton with another known system to produce carbon dioxide to attract insects to the trap since merely one

Art Unit: 3643

equivalent carbon dioxide generator is being substituted for another and the function is the same. In reference to claims 3, 8, of the specification, applicant states that corona discharge ozone producing units are old and well known. In reference to claim 4, Wigton discloses a heater as a further insect attracting element and element 34 for retaining and destroying insects attracted to the trap. In reference to claim 7, applicant discloses on page 8 that the corona discharge unit employs electrodes. In reference to claims 11-12, Wigton shows an inlet for entry of air into the unit and a discharge outlet for discharging of the insect attracting gaseous product from the unit as discussed in reference to claim 1, above. Wigton further shows a fan 38 for causing entry of air into the unit through the inlet and discharge of the insect attracting gaseous product through the discharge outlet as discussed above. In reference to claims 13-16, Wigton as modified by the Admitted Prior Art discloses a process of providing to an insect trap a gaseous product produced by the process of claim 1. In reference to claims 17-21, Wigton discloses the process of providing an insect trap in an area to be inhabited by insects and operating the device to produce the insect attracting gaseous product.

Response to Arguments

3. Applicant's arguments filed January 13, 2005 have been fully considered but they are not persuasive. Applicant's response overcomes the objection to claim 11. Applicant argues that the examiner's characterization of Wigton is incomplete, but this is not the case. See paragraph numbered 2, above. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a

Art Unit: 3643

reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In response to applicant's arguments against the references individually such as Wigton, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references since Wigton is not cited to show an ozone generator and an activated carbon filter. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The process of forming carbon dioxide by passing ozone through an activated carbon filter is old and well known. See the patent to Hagiwara et. al. which shows reacting ozone with carbon to form carbon dioxide and oxygen, noting column 1, lines 35-50. So while not having to employ a pressure tank to hold propane for combustion would be an advantage, having to employ a corona discharge unit could be seen as a disadvantage due to the cost and the high voltages employed to operate the corona discharge unit. Hence, one skilled in the art after seeing advantages and disadvantages to both types of carbon dioxide production would arrive at the conclusion that the way the carbon dioxide is generated is a matter of design choice since the function is the same. Applicant has provided no evidence to substantiate that the function is not the same noting that the carbon dioxide has the same function in both the present invention and in the prior art patent to Wigton.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Kurt Rowan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR